Exhibit D

Hr'g Tr., Nov. 14, 2013, 14:36 ET

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, MICHIGAN,	.	Docket No. 13-53846
	.	Detroit, Michigan
	.	November 14, 2013
Debtor.	.	2:36 p.m.
. . . . .		

HEARING RE. MOTION OF THE OBJECTORS FOR LEAVE TO CONDUCT LIMITED DISCOVERY IN CONNECTION WITH MOTION OF THE DEBTOR FOR A FINAL ORDER PURSUANT TO 11 U.S.C. SEC. 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) APPROVING POST-PETITION FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY CLAIM STATUS AND (III) MODIFYING AUTOMATIC STAY
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Jones Day By: BRAD B. ERENS 77 West Wacker Chicago, IL 60601-1692 (312) 782-3939
	Jones Day By: ROBERT W. HAMILTON 325 John H McConnell Blvd., Suite 600 Columbus, OH 43215 (614) 469-3939
For Detroit Retirement Systems - General Retirement System of Detroit, Police and Fire Retirement System of the City of Detroit:	Clark Hill, PLC By: ROBERT D. GORDON 151 South Old Woodward, Suite 200 Birmingham, MI 48009 (248) 988-5882
For National Public Finance Guarantee Corporation:	Sidley Austin, LLP By: GUY S. NEAL 1501 K Street, N.W. Washington, DC 20005 (202) 736-8041

APPEARANCES (continued):

For Syncora Holdings, Ltd., Syncora Guarantee, Inc., and Syncora Capital Assurance, Inc.:	Kirkland & Ellis, LLP By: STEPHEN HACKNEY 300 North LaSalle Chicago, IL 60654 (312) 862-2074
For Ambac Assurance Corporation:	Arent Fox, LLP By: CAROL CONNOR COHEN 1717 K Street, N.W. Washington, DC 20036 (202) 857-6054
Court Recorder:	Letrice Calloway United States Bankruptcy Court 211 West Fort Street 21st Floor Detroit, MI 48226-3211 (313) 234-0068
Transcribed By:	Lois Garrett 1290 West Barnes Road Leslie, MI 49251 (517) 676-5092

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE COURT: And let's move on and talk about discovery.

MR. HACKNEY: Good afternoon, your Honor. Stephen Hackney on behalf of Syncora.

THE COURT: Yes, sir.

MR. HACKNEY: Your Honor, we're here on a motion that Syncora filed with several other parties joining that relates to discovery that we'd like to take in anticipation of the hearing on the motion for post-petition financing that you spent most of the morning and afternoon discussing. Before I -- I know that we're running into your next call, and I will get right into the discovery itself, but I was wondering if I could --

THE COURT: Well, don't worry about that. Don't feel rushed. I want to --

MR. HACKNEY: Okay. I will try.

THE COURT: I want to take our time and do this properly.

MR. HACKNEY: I wanted to at the start, if I could, your Honor, frame the importance of the DIP motion itself to the case because I think its importance is significant not only to this case but to other Chapter 9's that may follow, and I think it's important to think about that in the context of why we believe discovery is important. As you've heard today, the proposed DIP loan in question is believed to be

the first of its kind. We actually -- our research indicates that it's not literally the first Chapter 9 DIP loan. Our research indicates that there have been a couple small DIP loans in other Chapter 9's, and there was a sizeable one that was done as part of a plan, but it is the first of its kind in terms of being the largest and also one I think that is unabashedly about revitalization of the city in part as opposed to immediate cash flow needs, so the DIP loan in this case that's being proposed is significant.

It is significant for a second reason, and that is because the proceeds of the DIP loan, the $350 million, 230 million about will be used to pay certain creditors outside of the plan context, and the $120 million that's going to be devoted to what are called quality of life initiatives, the idea of a revitalization of the City of Detroit, a renaissance on the street, so to speak, is also one that will be happening outside the plan context, so they're coming to you on an interim basis between eligibility and confirmation and saying that they would like to be able to do this today.

The reason this is of great sensitivity and concern to creditors is because if the city pledges away income streams or assigns them to different parties now, it has obviously an important impact on the city's ability to later fairly adjust the debts of creditors like Syncora or the pensioners or the others, so we perceive there to be

significant plan implications by some of these interim motions that are being brought to the Court, and that is why this is an area of great focus and concern for creditors, and that informs somewhat the discovery that we've sought.

I believe there is some agreement with the city that some discovery is appropriate, and I'd like to recite that for the record and try and narrow it. The city, as I understand it, is amenable to the idea that the objectors can obtain discovery into the DIP solicitation process, the DIP evaluation process, and the process by which the DIP was submitted to the City Council under PA 436. It's my understanding, at least, that we have general agreement that that's okay and also that the city is willing for its deponents, Mr. Doak and Mr. Moore, to be deposed.

Where there is disagreement with respect to the scope of potential document requests and inquiry is on the subject of the uses and the need for the quality of life proceeds, and this is where I will confess I was taken a little aback by our disagreement on this because the motion itself is replete with references to Mr. Moore's declaration but also to a discussion of all of the challenges that the City of Detroit faces, for example, with respect to blight remediation, the fire department, the police department, and IT infrastructure. These are some of the areas where the city has said it may -- it's not obligating itself to, but it

has said it may or that it intends to direct the quality of life proceeds at these subject matter areas. We believe that discovery into --

THE COURT: Excuse me. Why does Syncora care about what the city's priorities are in terms of quality of life spending?

MR. HACKNEY: The answer, your Honor, is because, as a creditor who, you know, expects to see a plan of adjustment at the end of the case that fairly allocates or fairly adjusts its debts along with the debts of the others in the case, the way the city spends its money and the impact or lack of impact that has on creditor recoveries Syncora believes is endemic to analyzing whether it is, for example, within the business judgment, as the city has contended it is and which is one of the elements under Section 364 or one of the factors you'll consider, whether it's in the best interest of creditors, as they have suggested that it is in their papers and as the order they proposed would find, and it also goes to whether --

THE COURT: Do you think the city is going to ask me to approve its allocation of how it's going to spend the proceeds of the loan?

MR. HACKNEY: I think that --

THE COURT: That makes me sound like a mayor or a city council.

MR. HACKNEY: Well, these -- your questions go right to the core, I think, of this matter, but also in some respects of the case, and I was -- let me respond in two respects, your Honor.

THE COURT: Well, we don't have to have an answer now, but the issue is why have discovery on all of this?

MR. HACKNEY: Yeah. So I will answer your question, which is I know that the city -- or I believe that the city is taking the position that you're not permitted to consider either the needs or the uses of the funds and that they have sovereignty to administer themselves sort of thematically under Section 904.

THE COURT: Is that a proposition you disagree with?

MR. HACKNEY: It is. It is because, your Honor, I acknowledge that under Section 904 that the city has the right to administer itself without the Bankruptcy Court interfering. That's the language of Section 904. But where things change substantially is when you come to this Court and ask this Court to begin to work the controls of the Bankruptcy Code to the benefit of the city when they invoke concepts like obtaining superpriority liens or good faith assurances to be given to parties so that they're protected no matter the outcome of various appeals and so on and so forth. When you come into that context, we believe you've now entered -- first of all, you've put your dispute --

you've consented to the idea that the Bankruptcy Court must determine whether it's appropriate, and we believe that unlike a mayor or another political leader who thinks about the needs of his citizens or her citizens in administering the body politic, a bankruptcy judge, under Chapter 9 and the history behind Chapter 9, the legislative purpose, does think in terms of fairness to creditors, that that is an essential aspect of the purpose of Chapter 9, and that the bankruptcy judge is duty bound to consider --

THE COURT: The fairness of what, though?

MR. HACKNEY: What's that?

THE COURT: The fairness of what?

MR. HACKNEY: The fairness of the proposed action in terms of how it will impact creditors. For example, we believe, your Honor, if I could go back to answer your question about will you have to involve yourself in assessing how they propose to use the money and whether they're using it in the right way, we think that, at a minimum, we should be entitled to take discovery on the subject but also that you should consider evidence later that there are less burdensome ways, for example, for the city to improve the quality of life in Detroit that may not impair creditor recoveries or that may not require superpriority liens and the like, that there are different ways that the money can be spent so that creditors will obtain either a better return on

their -- a better return on their claims. And, for example, your Honor, this is particularly appropriate when you think about the concept of Section 364 and its incorporation into Chapter 9, which hasn't always been part of Chapter 9, but when it was incorporated, there's some of the legislative history that suggests that the reason it was a good idea to incorporate it into Chapter 9 was similar to the reason that it is a good idea in Chapter 11, which is that post-petition financing can be used to enhance the value of the estate and enhance the value to creditors. So we believe that the question of how the money is being spent is germane to the question of whether or not it's serving the purposes of Section 364 even in the Chapter 9 context.

And your Court is asking -- the Court is asking questions that I think are momentous ones. I think the -- formulating the appropriate legal standard by which the Court can determine that the interests of creditors are being safeguarded whenever a municipal debtor invokes the provisions of Chapter 9 that are outside Section 904 I think is going to be critical and precedent setting, not only in this case but also in the other cases, and I think that it is inconsistent for the city, I guess, in my mind, your Honor, to say that this evidence isn't relevant or that you're not permitted to consider it when it dominates their motion and where they are asserting that they have exercised good

business judgment and that what they're going to do is in the best interest of creditors and is necessary to enhance the value of the estate and so forth, the other elements that you'll consider under Section 364. That is why we want to obtain that discovery, and we want to test the proposition that the city is advancing that this is a good way to spend the money and, by the way, so important that it has to be done now outside of the plan context at a time where the city doesn't have some sort of cash flow emergency. It's my understanding that the city's cash coffers have actually increased substantially during the bankruptcy in part because it isn't -- it is not paying bond debt such as the debt held by my client in part, so this isn't a situation where the city is coming to you and saying we need $5 million to get us through the case or to pay professionals or to literally pay the police officers. The city has more cash today than it did when it started the cases. It is about a novel and distinct concept, in our view, novel in the history of Chapter 9, which is that during the pendency of the case, you can use the Bankruptcy Code to revitalize the city and to allow for a renaissance, which is the word from the declaration and from the motion. And whether you can do that outside the plan context and whether you can actually subordinate creditor recoveries to the notion of revitalization is, we believe, a threshold issue of critical

importance to the cases, and that's why we are urging the Court to allow us to take discovery, to allow for a fully developed record before you for whatever decision that you'll make on this subject when we try it.

THE COURT: What does this discovery entail specifically?

MR. HACKNEY: What I would think it would entail is -- I understand that we haven't proffered requests yet, but I've already mentioned to counsel for the city that I understand we'll have to put some thought into formulating it because we don't want every piece of paper that relates to the fire department or the police department or to blight, and it's likely burdensome for the city to go collect all of that information. What I was thinking that we would want were two principal types of information. The first type of information would be information that relates to assessments of how the City of Detroit can improve itself. There have been consultants obviously in this case who have been doing this type of work. There have also been other consultants, it's my understanding, in the history of the City of Detroit who have looked at some of these questions, and the types of documents or reports, whether it's from a consultant or whether it's something internal at the Detroit Fire Department itself that says here are our needs, here are the most important things to us that would most allow us to

achieve our mission, here's the anticipated costs, those types of analytical documents I think would be of extreme importance to creditors so that they can make an assessment of whether or not the city is exercising its judgment in a way that's most appropriate or that is most efficient, and the second type of document that I could see would be documents that Mr. Orr himself considered as the decider behind the loan as he's looking out at the city he's administering and trying to decide how much money do I need and what pacing and where will I put it and why, documents that he considered that show how he selected the priorities that he selected and documents that show what perceived impact his decisions will have on the creditors in terms of their recoveries to the extent these documents exist. Those are the types of documents I was thinking of when we broadly described the concept of discovery into the uses and needs of the quality of life note.

A third category of documents would be additional specificity around the deployment of the capital in terms of how it will be spent, the specific uses.

There are also some depositions that we had proposed in addition to the two affiants, and the city, I think, is of the view that it may object to some of those depositions. There were four that we had put forward, a Barclays deposition that relates to the negotiation of the DIP itself;

depositions of City Council members that would be germane to discovery of the compliance with PA 436; discovery of an Ernst & Young representative, which is germane to the cash flow forecasts that have been assembled and what they say about the city's cash flow needs; and, last, depositions of the swap counterparties. And I want to make clear for the Court in proposing the concept that we would depose the swap counterparties, it wasn't my intention that we would revisit the forbearance agreement discovery that was done previously. It was my intention that we would examine them on the subject of whether they're going to close on the optional termination payment under a variety of circumstances because you wouldn't want the city to take down $350 million in credit if it was not going to be able to deploy the money in the way that it was saying and pay the interest costs and so forth and not being able to close. The city has suggested that they oppose the swap counterparty depositions and that they, I think, needed additional information on the Ernst & Young purpose.

But those were the categories, and those were the depositions that we propose to take, and I wanted to make sure that I contextualize that within what's at stake here in the motion itself. Thank you.

THE COURT: I'd like to hear from the city, please.

MR. HAMILTON: Good afternoon, your Honor. Robert Hamilton of Jones Day on behalf of the City of Detroit. When

we received on October 23rd Syncora's motion for authority to take discovery under Rule 2004, while we thought the procedure was incorrect, we understood that discovery was inevitable and going to occur with respect to our at that time anticipated motion to obtain approval for the post-petition financing from Barclays, and we immediately began the process of collecting and reviewing documents for eventual production to Barclays -- I mean to Syncora and others who may decide to object to our motion for approval of the financing facility.

We have collected and reviewed documents with respect to how much financing -- external financing the city will need to fund the assumption of the forbearance agreement if this Court were to approve that assumption in a separate hearing as well as how much external financing would be needed to start the funding of the restructuring initiatives that were the subject of the July 14th proposal to creditors and that was the subject of extensive testimony during the eligibility trial that your Honor oversaw over the last few weeks.

We've also collected documents regarding the solicitation process for potential participants in the post-petition financing facilities as well as the myriad of proposals that we received from various potential lenders and their terms and documents regarding the exercise of the

city's business judgment in selecting the Barclays proposal as the best one for the city. As a result of that process, we have collected and are prepared to produce tomorrow or Monday over 5,000 pages of documents on each one of those topics to those parties who indicate that they want to take that discovery and, with respect to some of the documents, agree to a protective -- or a confidentiality agreement to maintain the confidentiality of some of the documents that we're submitting.

We have also offered to Syncora to make our witnesses, our two declarants, available for deposition, Mr. Doak, who you heard from today, on Friday, November 22nd, in New York, and on Monday, November 25th, Mr. Moore in Detroit. The city consents to the discovery that I've just outlined the production of all these documents on the need for external financing, the process for obtaining that financing, and the selection of Barclays. We consent to the deposition of those two declarants.

Syncora is asking for leave to take discovery on other subjects that go substantially beyond the scope of what we consented to, we believe on subjects that threaten to impose substantial economic and logistical burdens on the city on topics that we believe are not what this Court must adjudicate when it hears and determines our motion for approval of the post-petition financing motion. Those

categories where they're going beyond what we think is the legitimate scope fall under -- or there's two categories. The first is relatively simple to deal with, and that's the category with respect to our proposal -- or our request that the Court approve our motion to assume the forbearance agreement. With respect to the motion that Syncora filed for leave to take discovery, they did not list that as one of the topics on which they were seeking documents, but they did identify they wanted to take depositions of the swap counterparties. I did not follow entirely what counsel's explanation was for why the depositions of the swap counterparties is not a back door effort to take additional discovery on the forbearance agreement, but I would just suggest that if this Court at a separate hearing determines to approve the city's assumption of the forbearance agreement, the city, as -- pursuant to the terms of that forbearance agreement that are detailed in our motion and in the motion to assume the forbearance agreement, the city would have the option to then cause the termination events that would trigger our obligation to pay the $230 million -- $230 million -- 210 -- $210 million pursuant to that forbearance agreement, so there would be, as we can see it, no reason to depose in connection with the finance motion the swap counterparties because the finance motion only becomes material if you approve the forbearance agreement. And if

you approve the -- if you approve the forbearance agreement, what the swap counterparties say about what their intentions are are immaterial and irrelevant because at that point the city controls what happens upon seven or ten days' notice under the forbearance agreement.

The bottom line is this Court has already heard and considered and decided what discovery should occur in connection with our motion to assume the forbearance agreement. That discovery has occurred, and the hearing is scheduled to occur, and it should -- it will be decided based on the record that this Court already dictated should be developed for that hearing, and Syncora or others should not be allowed to pursue discovery on the finance motion as a way to get back door discovery and supplement the record on the motion to assume the forbearance agreement.

The more difficult argument and the more difficult category is what counsel spent most of his time in his argument on, and that is the request for discovery on our proposed use of the quality of life -- the proceeds of the quality of life bonds. The devil in this request is substantial. While he indicates that they want to take just limited document discovery, just assessments that the city may have developed both at the macro level and at individual department levels, the fire department, the police department, and how much money they think they need for what

particular improvements, documents that Mr. Orr may have considered in deciding what restructuring initiatives to approve and which ones to table, and how the money will be spent among various different departments, I can't think of what kind of evidentiary hearing counsel is contemplating that that discovery would go to other than sort of a super-tribunal in which this Court second-guesses and sits in judgments of every single governmental decision that the City of Detroit is making on how to go forward with its revitalization and restructuring initiatives. There is no way that kind of hearing could be completed in one or two days.

Essentially, I think what counsel is suggesting is that Section 364 constitutes an effective repeal of Section 904 in a Chapter 9 case where the Bankruptcy Court does not have authority or jurisdiction to interfere with a municipality's governmental decisionmaking and its decisions on how to use its property and revenue unless the municipality decides they have to borrow some money, and if the municipality decides it has to borrow some money, then the Bankruptcy Court, notwithstanding 904, can sit in ultimate judgment and second-guess every single spending decision that the city makes on how much money to spend on fire, how much money to spend on police, how much money to spend on lighting, how much spending -- money to spend on

roads, versus creditor recoveries. And, in essence, they would turn the 364 --

THE COURT: Don't forget pensions.

MR. HAMILTON: Very important, pensions, maybe not sacrosanct, but very important. And the point would be that instead of the Chapter 9 plan of adjustment process working those things out, they want to turn the 364 hearing into some macro hearing that decides how all the money that the City of Detroit should spend for the next ten years, how it should be spent, what dollars should go to creditor recoveries, what dollars should go to fire improvement, what dollars should go to police improvement, all because we have to borrow some money in order to fund some of these initiatives. We do not think that is a proper construction of either 904 or 364. We believe that when you hear the 364 motion, we have to demonstrate that we exercise sound business judgment in determining that we needed to borrow money in order to meet our cash needs. We will also have to demonstrate that we -- in order to borrow that money under 364(c)(2), we had to give super administrative priority status and liens because general unsecured credit was not available. That does not mean that this Court will sit in review of the city's business judgment on the underlying money that is needed. You do sit in judgment on whether or not forbearance agreements should be approved, but that's on a separate

motion under 365 and a 9019 motion. And if you decide that that forbearance agreement should be approved, then we know we need $210 million. Then, in connection with the 364 motion, you will hear and adjudicate our business judgment as to whether or not we needed to borrow the money to pay that $210 million and whether or not the terms on which we want to borrow that money are reasonable and in everybody's best interest. That is your call.

Similarly, by the same token, with respect to the restructuring initiatives, the city has exercised its governmental and political judgment as to how much money it should invest in its restructuring initiatives over the next ten years. You do not sit in judgment and review the city's exercise of its governmental and political decision-making in that regard. That's up to the city to figure out how to do with the mayor, with the emergency manager, and with all the constituents. We have already presented an extensive evidentiary record on how those calculations were made, what the restructuring initiatives are, and how much they will cost over the next ten years. And we lay that out in our motion just like we lay out all the details of the forbearance agreement, but in connection to whether or not you're going to approve the financing arrangement, what you sit in judgment on is not our decision to spend $1.25 billion over the next ten years on those restructuring initiatives

because that's a governmental political decision that only the City of Detroit has the authority to make. What you sit in judgment on is our business judgment that we need to borrow some money to start paying for those initiatives and the terms on which we want to borrow that money are reasonable. That's what you sit in judgment on, and we are going to produce the documents that are relevant to that inquiry, but it is not appropriate to turn the 364(c) hearing into some mega trial that kind of makes moot the whole plan of adjustment in which the parties ask you to decide what's an appropriate use of loan proceeds and what's not. Should we use the loan proceeds to pay creditor recoveries, or should we use it to pay pensions, should we pay it to use -- to pay for OPEB, or should we use it to pay for lighting? That's not what this hearing is about, and I think it's improper for them to try and seek discovery on that.

We are willing to make Mr. Moore and E&Y available for deposition on the fact that we need to borrow money to start paying -- to start funding the initiatives, the restructuring initiatives, but we think it is improper for them to take discovery on the underlying decision-making, the political and governmental decision-making that the City of Detroit has undertaken in deciding what restructuring initiatives they're going to undertake and when over the next ten years and how much they're going to cost. That's not

appropriate for this motion.

THE COURT: Thank you, sir.

MS. CONNOR COHEN: Your Honor, may I also be heard in support of the motion?

THE COURT: Yes, ma'am.

MS. CONNOR COHEN: Carol Connor Cohen, your Honor, on behalf of Ambac Assurance Corporation. Your Honor --

THE COURT: But not to repeat anything.

MS. CONNOR COHEN: I'm sorry.

THE COURT: But not to repeat anything.

MS. CONNOR COHEN: I will not repeat anything. I want to start with, though, talking about what the test is under 364 because quite clearly the city has moved to have your Honor make a ruling under 364(c) in this bond financing. The Court will have to look at whether the debtors exercise reasonable business judgment, whether --

THE COURT: On what?

MS. CONNOR COHEN: On -- I'm going to -- would you just let me finish, and I'll get back to that? I want to come back to that.

THE COURT: You're asking me not to ask you any questions?

MS. CONNOR COHEN: No.

THE COURT: I didn't think so.

MS. CONNOR COHEN: No, but actually there's a point

I want to make --

THE COURT: Okay.

MS. CONNOR COHEN: -- here that --

THE COURT: I'll let you work into it. That's fine.

MS. CONNOR COHEN: -- the Court has to exercise reasonable business judgment, has to evaluate whether it's in the best interest of creditors and the estate, has to look at alternative financing that might have been available, whether there are any better bids and all that kind of stuff -- we've talked about that -- whether it's necessary, essential, and appropriate to preserve the estate and continue operations, whether the terms are fair, reasonable, and adequate, whether it was negotiated in good faith and at arm's length. Now, some of those criteria are the same as in a Chapter 11, and some of those criteria the debtor has said they're happy to give us discovery on. But there's two or three of these that really have never been applied before on a Chapter 9, and that's exactly my point, the reasonable business judgment and the best interest of creditors and the estate and whether it's necessary, essential, and appropriate to preserve the estate and continue operations. Those have never been applied before in a Chapter 9, and part of what the Court will have to do in deciding the motion before the Court will be to decide what the proper criteria is, in fact. I don't believe that's what we're here for today because there is

going to be extensive briefing, I'm sure, on those questions, and, you know, we will --

THE COURT: Well, but some judgment about that is necessary to control or decide the dispute about discovery.

MS. CONNOR COHEN: Of course it is, and what we will point to in discussing that issue, for example, is the legislative history that was -- when 364 was first incorporated into what was then the version of Chapter 9, and at that time Congress said the reason they were doing it, the reason they were adding this ability in for a municipality was so that the municipality could maintain essential city services directed to public safety and public health during the reorganization proceeding, kind of a narrow purpose because it was very controversial to add this provision into Chapter 9.

Now, the question is going to become -- and we don't -- this isn't a question for today again, but the question is going to become at what level is the city permitted to spend at the creditors' expense and still be able to confirm a plan because it is pretty well settled -- there's tons of cases out there that when it comes time to confirming a plan of adjustment, that the best interest of creditors test does limit the city's ability to spend lots of money on improving and glossing the current situation as opposed to paying off creditors, that there's a limit to how

much money the city can expend at the expense of creditors. We believe that same criteria should apply on the best interest of creditors position here.

THE COURT: Fixing the lights in the city is glossing the city?

MS. CONNOR COHEN: No. And we're not talking about the Lighting Authority motion right now anyway, but you're right.

THE COURT: All right. Fair enough. I'll change the question.

MS. CONNOR COHEN: To ask --

THE COURT: Getting adequate police and fire is glossing the city?

MS. CONNOR COHEN: Having adequate police and fire is not putting a gloss, absolutely not. And the legislative history suggests that's exactly why this provision was added to Chapter 9, but how and whether you're doing it in the most efficient manner or at the expense of repayment of creditors is something that's in this Court's purview under this test.

Now, we keep hearing 904, 904, 904. 904 is not an absolute. 904 says quite clearly that the debtor can consent to the Court's involvement, interference, as the statute says. Here the debtor has come to the Court. They could have gone off and spent their money however they wanted. They could have borrowed money if -- and spent it how they

wanted, but they came to your Honor and asked for an order, and the reason they're coming to your Honor and asking for an order is because --

THE COURT: They came to the Court for an order but only to approve the necessity of the borrowing, the necessity of the priority and the senior liens, and to establish the reasonableness of the terms.

MS. CONNOR COHEN: But --

THE COURT: What suggests there's any consent beyond that?

MS. CONNOR COHEN: Well, once you do that, when they come to your Honor and asked to be able to give Barclays this superpriority treatment and the like, then that has to be considered consent to having the criteria under 364(c) apply, which includes looking at the best interest of creditors and whether they are not --

THE COURT: Okay. Can you walk me through the baby steps as to why that follows because I don't exactly see it?

MS. CONNOR COHEN: Well, simply coming to the Court in the first instance has in other situations effectively been treated as consent. All right. But they didn't have to come to your Honor.

THE COURT: I'm not sure the proponents of Stern versus Marshall would a hundred percent agree with you on that.

MS. CONNOR COHEN: Well, I don't -- okay. I'm going to let that one pass, but --

THE COURT: Well, no. It's an important point, which is the mere fact that a party comes to court can mean consent to some things, but you have to be very careful in measuring what the consent is.

MS. CONNOR COHEN: All right. I'll take that as a given, but what the -- again, what the --

THE COURT: Why I'm asking --

MS. CONNOR COHEN: What the debtors --

THE COURT: Why does this motion constitute consent for this Court to approve, for example, how the city will spend $350 million?

MS. CONNOR COHEN: Because they're asking your Honor to give them -- to give Barclays, this new lender who's going to come in and layer on $350 million worth of new debt --

THE COURT: Um-hmm.

MS. CONNOR COHEN: -- over and above most of the other creditors in this case --

THE COURT: Um-hmm.

MS. CONNOR COHEN: -- they're asking them to have that superpriority status, to become a superpriority creditor of the city, and part of the criteria for deciding whether that's appropriate is to look at the best interest of creditors, a test we believe has to be interpreted the same

way as the best interest of creditors test in confirming a plan of adjustment, which, again, looks at a balance of the extent to which the city can spend at the expense of the creditors, so that does require -- now, the litany of horribles we got about the kind of trial, we don't think that's what you were looking at.

THE COURT: Is there a 943 case that says that?

MS. CONNOR COHEN: I'm not aware of a 943 case, no, but when -- what we're talking --

THE COURT: You know what I'm asking. I'm asking in defining best interest of creditors in plan confirmation, is there a case that gives the -- that says the Court has that broad authority?

MS. CONNOR COHEN: There actually was case law cited in Syncora's objection to the Public Lighting Authority motion that we joined in that says it's --

THE COURT: I should look there?

MS. CONNOR COHEN: Those cases say exactly that.

THE COURT: All right. I'll look there. Thank you. That's all right. If it's there, you don't need to pull it out again.

MS. CONNOR COHEN: Sorry.

THE COURT: That's all right.

MS. CONNOR COHEN: I don't retain case names.

THE COURT: Right.

MS. CONNOR COHEN: And I lost what I was saying.

THE COURT: Oh, I'm sorry.

MS. CONNOR COHEN: No. It's not your fault.

THE COURT: Okay. I won't take any then.

MS. CONNOR COHEN: Because that is a factor that has to be taken into account at plan time in that text -- in that context, then we think that's something that has to be taken into account also in applying 364 because it also incorporates a best interest of creditors component in the factors, at least according to the case law, and that -- by invoking the Court's jurisdiction to ask for that order, we believe they have consented to having the Court look at the things that have to be looked at.

Oh, I know what I was saying. I was saying that the hearing that we're looking for doesn't envision, you know, a lengthy exposition of all of the operational details of all of these various departments and so forth and so on but rather a testimony about what they're going to spend it on, why they need it, why they need those things, and why it has to cost what they think they're asking for, and once your Honor hears the testimony, then you decide does it meet this criteria or not. It's not saying this expenditure is okay and this expenditure isn't.

THE COURT: Where in this process do the citizens of Detroit get to be heard?

MS. CONNOR COHEN: Well, they will be heard through their various representatives, many of whom are here, the unions, the retiree representatives.

THE COURT: There's 680-some thousand citizens. A small percentage of them are represented by unions.

MS. CONNOR COHEN: Your Honor, I'm afraid I don't see that --

THE COURT: I guess my question is, you know, not to be flip about it, don't the citizens have a right to be heard on the question of how the city will spend the proceeds of this loan if it's approved, and if the answer to that question is yes, isn't the mechanism for providing for that right to be heard the political process, not the judicial process?

MS. CONNOR COHEN: Well, it is, and -- it is.

THE COURT: Isn't that the end of the discussion?

MS. CONNOR COHEN: And that's part of the 436 process. I mean the political process is represented in this situation in part by the 436 requirements, the City Council and the Emergency Loan Board, for example, and for the city officials who will be elected -- who have been elected and who will be taking over when Mr. Orr's term is completed, but with --

THE COURT: Right, so why -- but doesn't that mean it's a political process, not a judicial process?

MS. CONNOR COHEN: Well, it's a judicial process to the extent that your Honor has to apply the standards that are in the statute and in the case law interpreting the statute for providing Barclays with the superpriority status.

THE COURT: Suppose the creditors' interests are different from the citizens' interests? What do I do then?

MS. CONNOR COHEN: Your Honor applies the statute, the statutory --

THE COURT: Creditors win over the --

MS. CONNOR COHEN: -- standard, which says that you have to balance -- obviously the -- we don't -- none of us would disagree that the city is entitled to and should spend those amounts necessary to provide essential service to provide public safety and health but doing so in a way and at a cost that is reasonable and that doesn't do so at the expense of the creditors. Thank you, your Honor.

THE COURT: All right.

MR. HACKNEY: Your Honor, can I reply to Mr. Hamilton?

THE COURT: You can, but let me see if there are any other objecting parties --

MR. HACKNEY: Absolutely.

THE COURT: -- who want to be heard, and then I'll give you a chance. Did you want to be heard, Mr. Gordon?

MR. GORDON: Thank you, your Honor. Robert Gordon

of Clark Hill on behalf of the Detroit Retirement Systems. Thank you, your Honor. In some respects, your Honor, I feel like I'm still trying to catch up from last week's trial to this issue, and I think it highlights what I'm seeing from over there as a chicken and egg and chicken again issue right now, which is it sounds like we're arguing objections that -- legal issues that may be implicated by the motion that was filed for the DIP financing, which is supposed to be heard later, which hasn't been fully briefed yet, which may determine what the total contours are of what's fair to ask for in discovery. We're arguing today to figure out what we can ask for in discovery, and I'm concerned about that because we haven't had a chance to fully brief this. There's significant legal issues that are being discussed here, but I don't think all of us have a chance to brief that just yet, so I'm concerned about that. So I'm not sure whether --

THE COURT: Well, I don't know what to do about that.

MR. GORDON: Yes.

THE COURT: It is a concern, but the fact is that Syncora filed this motion, and the choice was deal with it now or deal with it later, and the reason why I chose now is because the city says it's got to get going on this loan.

MR. GORDON: Well, there seem to be a couple of

options here. One, I'm just trying to think this out -- think this through with you before we're --

THE COURT: Um-hmm.

MR. GORDON: -- prejudiced in some way because I would like to be able to brief this if we're really going to go down this path today. The discovery could be held in abeyance while we file objections to the DIP financing and claim that there's all sorts of reasonable business judgment issues that the Court should be probing, and the Court could then rule upon whether those are fair game or not subject to discovery, but then we'll be into mid-December, and then we'll be starting discovery. The city says that's not fast enough for us. Everything has to be immediately because our hair is on fire and everything else, and, you know, everything has to be done like yesterday for reasons I'm not exactly sure since they're accumulating cash in the meantime and they're still paying payroll and so forth. That's one option. Doesn't seem real efficient, but that's one option. The other option --

THE COURT: Well, hold on.

MR. GORDON: Yes, sir.

THE COURT: I'm sure the city is as concerned as you are about the fact that the retirement contributions aren't being made.

MR. GORDON: I hope they're concerned about it. I'm

not sure, but I hope so. I'm sorry, your Honor. I'm not sure if I'm following --

THE COURT: You missed my point.

MR. GORDON: I missed your point. I'm sorry.

THE COURT: Well, your point was there's no urgency here.

MR. GORDON: Oh, I didn't say no urgency. I'm just trying to think of what's prudent.

THE COURT: Well, your point was that there was no urgency here, that we can wait till January.

MR. GORDON: Not necessarily, your Honor. The other option is that we allow this discovery because it's not as -- certainly not as broad as what we just engaged in in the last 45 days in connection with eligibility, that we allow this discovery, and if some of it turns out to, in your mind, not be relevant, then I mean we've certainly incurred an expense. There's no doubt about that. But if the urgency is more important, then so be it, but I don't think we should be precluded from at least taking the discovery and being fully prepared to point out things. I think we all actually were surprised at some of the things that came out in discovery relative to the trial last week that -- anyway, I won't go into that, but I do -- no problem. Sorry. So that's another option is I mean, you know, if urgency is that important, then the discovery seems to be fairly narrowly tailored. We

can discuss -- I haven't had a chance to really think about it. We can discuss whether the swap participants are necessary.

THE COURT: It's hard for me to see how discovery on the subject of how the city should spend $350 million is anything but gigantic, enormous.

MR. GORDON: Yes. I totally agree, and I think that the suggestion that 364(c) --

THE COURT: I mean because that opens up the possibility that any objecting party -- and by that I mean objecting to the motion -- can call its own expert or experts to testify about how he or she from an urban planning perspective thinks this money ought to be spent.

MR. GORDON: Well --

THE COURT: Wow.

MR. GORDON: -- as your Honor knows, it's a reasonable business judgment standard. It's not reinventing the wheel. To suggest, as city council -- as city's counsel has, that 364(c) in the context of Chapter 9 doesn't even implicate reasonable business judgment -- at least that's what I was hearing --

THE COURT: Yeah.

MR. GORDON: That seems pretty big to me. That seems a bit odd. That kind of reads 364(c) out of Chapter 9, which is not the case.

THE COURT: Well, no.

MR. GORDON: I don't know how you -- I don't know --

THE COURT: I think the argument is you reconcile 364(c) with 904.

MR. GORDON: And how do you do that? I mean I didn't hear anything here that could parse that and -- well enough to say that we shouldn't be talking about what is reasonable business judgment in terms of what you're going to use this for if you're going to incumber unincumbered assets that could otherwise be used in various ways and which are not being proposed -- these initiatives are not being proposed in the context of an overall Chapter 9 plan. They're saying they need to commence these things, but they're not doing it in the context of a Chapter 9 plan. They're doing it outside of a plan. I think there are serious implications there.

THE COURT: So you think, just to summarize, that the city should go with an understaffed police department, an understaffed fire department, 40 percent of lights lit, I'm not sure how many tens of thousands of abandoned properties, until a plan is confirmed?

MR. GORDON: No, your Honor, but I'm not -- I am not sure that the $150 million portion of the DIP loan has been clearly identified as to what it will go for, so I think that there are fair questions to be asked about that, but if it is

going to provide essential services, that would be a different story. And as to the $200 million portion of it, of course, all subject to the arguments we've made -- that all the parties have made regarding whether the swap participants are even entitled to it, there needs to be some analysis of whether if that part goes away, if the Court determines that the swap participants are not secured creditors, is the 150 million still there? How is that affected? I don't know that we've fully analyzed that yet.

THE COURT: All right. Thank you.

MR. GORDON: Thank you, your Honor.

THE COURT: Before I get back to you, I want to ask a question of the city because I want to give you the last word. Sir, at the lectern, please.

MR. HAMILTON: Yes, sir.

THE COURT: I didn't quite hear your response on the request for discovery regarding compliance with PA 436.

MR. HAMILTON: We have no -- we have no problem with that. They wanted to take a deposition of a City Council member. We took no position on that. We don't represent the City Council. We would appear at the deposition if it happens.

THE COURT: All right. Thank you. Sir.

MR. HACKNEY: Thank you, your Honor. I will be brief, but the stakes are very high, and I think that the

legal position that the city is taking is breathtaking here because you heard Mr. Hamilton say that when they come to you on a 364 motion and they ask you to work the controls of the Bankruptcy Code to their advantage, should you deign to ask -- to probe behind what they're using the money for, why they believe they need it and assess whether this borrowing is in the best interest of creditors, apply some of those different elements you heard both counsel and I talk about, that if you're to do that, now you're sitting as a super tribunal almost how dare you interfere with our administration. You are now acting as a super tribunal when there's no question that if they did these very plan-like steps, paying $220 million to a creditor, investing in the city, revitalizing the city and pushing down on the creditor stack to do so, if they did that in the context of a plan, there is no question that the Court would be within its rights to make all of those assessments, whether it's fair and equitable, whether it's in the best interest of creditors, those precise elements that are designed to protect creditors and make sure that the plan is fair, that it does fairly adjust the debts. The thesis here is, well, why don't we just pull it forward because if we can pull it forward out of the plan context, we can engage in a number of these key set pieces with the Court where their position is that they will come in and say, "In my judgment, it's

necessary, and you must defer to my judgment." You're given no opportunity to assess, and you could give away the city, so to speak, in the process of improving itself because you could -- Detroit's challenges are well-known, and I'm sympathetic to and sensitive to your questions. I don't mean to be callous. I understand that there are issues with the lights, with 911 response times, and I understand that there are real people out there today that are living with these challenges, and I'm not being callous, but I do want to say this. They've been living with these challenges for a very long time, and while it is important that --

THE COURT: This argument does not impress me, counsel. Don't go there.

MR. HACKNEY: But while it's important, it is something that must be fairly balanced with the other aspects of the city's --

THE COURT: That's a fair point, but the fact that they've been living with it for a long time --

MR. HACKNEY: Agree. Well, and --

THE COURT: -- is no justification for imposing it upon them for another day.

MR. HACKNEY: I'm not trying to say that we should make them wait for no reason at all. I am saying that there is a good reason to approach this with both the benefit of a fulsome record and with caution because, your Honor, even as

we talk about the business judgment rule in this context, I think that your rulings on what the business judgment rule means in Chapter 9 are going to be questions of first impression in some respects, and I think they are going to be momentous rulings. I know what it means in Chapter 11. I deal with that a lot, and I know the Court does as well. But when you talk about the way the business judgment rule works in Chapter 11, it's not clear how it translates into Chapter 9. For example -- and don't -- this is not intended to be flip or callous, but I'm trying to map these two things very precisely. Are the citizens of the city, are they like the equity in a Chapter 11? That would be -- that would be --

THE COURT: Those analogies are so imperfect that it's not even worth trying.

MR. HACKNEY: There are challenges there, and so I actually think that when you say what the business judgment rule means under 364 in the context of Chapter 9, I think that ruling is going to grapple with these concepts of balance, necessity, rights of the citizens vis-a-vis rights of the creditors, and I -- and those are the types of issues that you would grapple with, I believe, in a plan. I don't believe that the city can say that you are not entitled to grapple with them in the context of 364.

I'd like to finish with one point. I want to thank you for your patience. There's one thing that doesn't make

any sense to me about the city's position here today, which is they are willing to allow us to take the deposition of Mr. Moore, so he's the Conway MacKenzie consultant whose deposition is a very colorful recitation of the challenges and how they need the money to address the challenges, so it's both about needs and uses. It doesn't square with me that they're saying, yeah, you can depose Mr. Moore because, of course, we're going to call him, and we are going to paint a picture of the City of Detroit that justifies this loan for Judge Rhodes, but we won't give you discovery that relates to the work and the assessments and the types of things that he engaged in and reviewed and considered in order to generate the declaration that we attached. I don't see how those two things fit with one another. If the needs and the uses are irrelevant, why does it dominate their motion? Why is Mr. Moore's declaration devoted entirely to it? Why is he proposed as a witness? If those things make sense for the city because they admit that they are relevant to their motion, then the discovery on the uses and needs I believe also would be relevant. I agree that while we can try to minimize the burden, it will be substantial discovery because of what you said. I'm not going to disagree with that, but this is a big loan, and this is a big issue for the creditors. We're talking about $120 million on top of the swap counterparty termination amount.

THE COURT: It's a big number, but it pales in comparison to the numbers I heard the city needs for its revitalization program over -- I think it was ten years.

MR. HACKNEY: I think that in some respects, your Honor, the whole case is about that word "need," and I think it's a hard question because I think that this is something that's --

THE COURT: Isn't "hard" just another word for political?

MR. HACKNEY: No. I think in this case it's emphatically going -- it is certainly also a political question that people wrestle with, that certainly the city wrestled with before bankruptcy under the constraints that it had to operate under. I think it is -- no matter how much we struggle with the difficulty, it is a legal question, though, for you because -- because necessity is something that municipalities struggle with everywhere outside of bankruptcy, when they come to bankruptcy and they now want to confirm a plan and get out, they have to prove to you that the steps that they propose to take, the recoveries that they propose to offer are fair and equitable and are in the best interest of creditors. In the case of the City of Detroit that has these well-documented challenges -- and I won't shirk from saying that they are significant challenges -- at some point doesn't Kevyn Orr just come in and say, "Why would

I ever give creditors a dollar? I mean the needs here are substantial, and I intend to invest not a billion" --

THE COURT: A lot of people think that's what he already said.

MR. HACKNEY: I guess I would say he's come relatively close to it, but I'll finish with one point, which is you can see there's a logical way to back into the fact that the Court must be as vigilant, we believe, in the interregnum period between eligibility and closing as it is in confirmation. And the logical point is that if you put the plan together that said we are going to revitalize the city, improve services, speed up police officer response time, protect our firemen, remediate blight, build parks, all sorts of different types of things, and give the creditors nothing or very little, pretend that the plan said that -- some people feel that the plan does say that today, but pretend in this hypothetical the plan said that and it didn't marshal any creditor support, it wouldn't be a confirmable plan that would allow the city to exit, so you know that in the backdrop of all of this, the need to have at least some creditor support -- and the history of Chapter 9 indicates --

THE COURT: Well, it's way premature to come to the conclusion about what plan is confirmable and what isn't.

MR. HACKNEY: This motion --

THE COURT: There are provisions for cramdown --

MR. HACKNEY: There are.

THE COURT: -- in Chapter 9.

MR. HACKNEY: There are, but those provisions still --

THE COURT: A plan can be confirmed with no creditor support.

MR. HACKNEY: Well, at least an impaired assenting class I would expect even in cramdown, but understood. You could have a small minority, but it would still have to satisfy all those factors of what's fair and equitable, what's in the best interest of creditors.

THE COURT: True.

MR. HACKNEY: Those never go away, and I think that's the difference between when you come to a bankruptcy judge in a Bankruptcy Court and start asking for these unique aspects of the Code is that that is the perspective, and this is one of the things we intend to brief for you in our objection because I do want to -- it is absolutely complicated and I believe reasonably a first impression. We've been --

THE COURT: All right. I'm inventing a process here that I think will at least go some good measure of the way toward accommodating everyone's interest here because I think there -- I think there is merit in the concerns that you have raised and that Mr. Gordon have raised about process here, so

here's the best I can come up with to try to accommodate everyone's interest here. The first is between now and when we start the hearing to limit discovery in the ways that the city has proposed or, in the case of PA 436, not opposed, and then this will give you then an opportunity to brief more fully than we have in connection with today's hearing the issue of what is the appropriate scope of the Court's review of this motion under Section 364(c). And then in the context of that hearing, which the Court will take so much evidence as the city thinks is relevant to the motion, according to its view of the scope of the Court's review, the Court will then decide whether, based on its determination of the scope, that the record is complete or to provide for further discovery on a more expanded scope of review, so I know it's a little bit more cumbersome and complex, but I think there is merit in trying to make a determination of the scope of review in a more fulsome way than this discovery motion has allowed us to do, so that will be my order at this point in time. I will try to prepare an order that perhaps more articulately sets forth what I'm trying to do here than I have been able to on the record here.

MS. CONNOR COHEN: Thank you, your Honor.

MR. NEAL: Your Honor, just -- good afternoon again. Guy Neal. Just a question on the objection deadline. I know there's been talk potentially of having that date moved. I

believe it's --

THE COURT: What is the deadline now?

MR. NEAL: I believe it's on the 22nd, but I thought that it might be moved to the 27th. I'm just not sure where it stands today.

MR. ERENS: Your Honor, the notice that the debtor sent out had set the 21st as the objection deadline. We've already talked to Syncora because of the need to accommodate discovery that we would move that objection deadline to the 27th. The debtor then would reply on the 4th consistent with the order your Honor issued in connection with the 10th, the hearing on the 10th, and then we'd have the hearing on the 10th.

THE COURT: All right. So if that's your stipulation, you may submit that, but you'll engage in discovery in the meantime. Is that the idea?

MR. HACKNEY: It is.

THE COURT: All right.

MR. HACKNEY: Your Honor, can I ask one clarifying fact?

THE COURT: Sure.

MR. HACKNEY: I promise not to hector you to death with questions, but the one --

THE COURT: Thank you.

MR. HACKNEY: The one thing that I do want to

understand because I don't want to violate this order, which is Mr. Moore's deposition, because -- can I --

THE COURT: The city has offered it up. You take -- you ask him whatever questions you want to ask him.

MR. HACKNEY: Okay. That's the best way because then we don't have to do them twice or whatever. I just wanted to clarify that. Thank you.

MR. ERENS: Also, I should make clear, your Honor, we would try, if it was okay with your Honor, to have the objection deadline moved to the 27th only for parties who felt they needed to participate in discovery. If parties did not think they needed to participate in discovery, we'd like to get those objections so that we can start reviewing them. The city will not have a long period of reply.

THE COURT: Can you readily identify those parties or are we going to have a dispute about which parties and which category?

MR. ERENS: We will certainly try, so we'll do our best.

THE COURT: All right. Well, I'll trust you to try to work it out. If there are issues, you can get me on the telephone.

MR. ERENS: Okay. Thank you.

(Hearing concluded at 3:40 p.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett November 19, 2013

Lois Garrett